IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

THURSDAY, THE NINETEENTH DAY OF AUGUST
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MR JUSTICE V.ESWARAIAH

WRIT PETITION No. 17593 of 2003

Between:

1. P. Suryanarayana, S/o.Subba Rao
   R/o.Guntur.
2. M. Sujatha, D/o. Gowri Shanker
   R/o.Guntur.

..... PETITIONERS

AND

1. State of Andhra Pradesh rep. by its Secretary to Government
   School Education Department. Secretariat, Saifabad, Hyderabad.
2. The Director of School Education, Andhra Pradesh,
   Hyderabad.
3. The Regional Joint Director of School Education,
   Guntur.
4. S.P.S. High School, Guntur rep. by its Secretary and Correspondent.

.....RESPONDENTS.

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an appropriate writ or order or direction more particularly one in the nature of Writ of Mandamus declaring as illegal and arbitrary the proceedings Rc.No.6053/B1/2002, dated 27-5-2003 issued by the 3rd Respondent in so far as applying the conditions prescribed in G.O.Ms.No.100, Education Department, dated 16-8-2001 and issue a consequential direction to the respondents to grant all the benefits to the petitioners such as arrears of salary, seniority, increments etc. from the date of submission of proposals for absorption from unaided to aided i.e., 21-2-

2000 and also to count the unaided service rendered by the petitioners from 24-8-1998.

Counsel for the Petitioner: Mr.A.VENKATARAMANA

Counsel for the Respondents 1 to 3 : GOVT. PLEADER FOR SCHOOL EDUCATION FOR RESPONDENTS 1 TO 3.

Counsel for the Respondent No.4: Mr.D.V.SITHARAMA MURTHY

The Court made the following :

ORAL ORDER:

The petitioners were appointed in un-aided and sanctioned posts pursuant to the selection conducted by the selection committee on 25-1-1998 in fourth respondent school. The said appointments were also approved by the District Educational Officer, Guntur vide his proceedings dated 24-8-1998. While so, two aided posts of Secondary Grade Teachers fell vacant in fourth respondent school due to retirement and resignation of two incumbents. Hence, fourth respondent sent proposals for absorption of the petitioners in the said two aided posts. Third respondent vide his proceedings dated 22-6-2000 requested second respondent for issuance of necessary instructions for absorption of the petitioners in the said aided posts. As no action was taken, the petitioners filed W.P.No.14345 of 2002 which was disposed of on 14-8-2002 directing the Director of School Education, second respondent herein, to consider and pass appropriate orders on the proposal submitted by third respondent. As the said orders were not complied with, the petitioners also filed C.C. No.281 of 2003 and pursuant to the notice issued in the contempt case, third respondent issued proceedings dated 27-5-2003 permitting fourth respondent to absorb the petitioners in the aided posts. But, while issuing orders dated 27-5-2003, third respondent mentioned that the petitioners are permitted to be absorbed in the aided posts as per the conditions prescribed in G.O.Ms.No.100, Education (PS-1) Department, dated 16-8-2001. The petitioners question the said order insofar as applying the conditions prescribed in G.O.Ms.No.100, dated 16-8-2001 as they have been selected prior to issuance of the said Government Order.

Learned Govt. Pleader for School Education submits that the petitioners were absorbed after issuance of G.O.Ms.No.100, dated 16-8-2001 and, therefore, the absorption is subject to the conditions prescribed in the said G.O.

Similar question fell for consideration in **Z.J.P. Prabhod Bose v. State of A.P.** (W.P.No.11322 of 2002, dated 17-11-2003) and this Court, while considering the rival contentions, held that the absorption of the petitioner from unaided post to aided post, by no stretch of imagination, can be said to be a new selection justifying the official respondents to place him under apprenticeship in terms of newly inserted sub-rule (4-a) to Rule 12 of the Rules framed by the Government in G.O.Ms.No.1, Education (PS-2) Department, dated 1-1-1994 by reason of the orders issued by the Government in G.O.Ms.No.180, Education Department, dated 29-12-2000 and the subsequent amendment made thereto by reason of the orders issued in G.O.Ms.No.100, dated 16-8-2001.

The petitioners herein were initially selected and appointed in unaided posts in terms of the rules issued in G.O.Ms.No.1, dated 1-1-1994 after following due process of recruitment by the duly constituted staff selection committee with a condition precedent for absorption in aided posts. Therefore, the absorption of the petitioners in aided posts cannot be treated as fresh selection so as to attracat the orders issued by the Government in G.O.Ms.No.180, dated 29-12-2000 and G.O.Ms.No.100, dated 16-8-2001 applicable to the petitioners justifying the action of the respondents to place the petitioners in apprenticeship and pay them stipend.

Therefore, following the order of this Court in W.P.No.11322 of 2002, the condition imposed in the impugned order dated 27-5-2003 that the absorption of the petitioners is subject to the conditions prescribed in G.O.Ms.No.100, Education (PS-1) Department, dated 16-8-2001 is set aside. As a consequence thereof, the absorption of the petitioners in aided posts shall be treated as not on apprenticeship and they shall be paid the scale of pay attached to the post in which they are absorbed.

The writ petition is accordingly allowed. No costs.

19th August 2004. **(V.ESWARAIAH, J.)**

Note: CC in three days.

ARS

That Rule Nisi has been made absolute as above.

Witness the Hon'ble Sri Devinder Gupta, the Chief Justice on this Thursday the Nineteenth day of August Two Thousand and Four.

To

1. Secretary to Government, State of Andhra Pradesh, School Education Department. Secretariat, Saifabad, Hyderabad.
2.The Director of School Education, Andhra Pradesh,
Hyderabad.
3.The Regional Joint Director of School Education,
Guntur.
4.Two C.Cs. to Govt. Pleader for School Education, High Court Bldgs., Hyderabad (OUT).

5.Two C.D. copies.